Local 909, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (General Motors Corp.-Powertrain) *and* Edward F. Billotti, Robert C. Chojnack, Annie P. Smith, and Robert E. Strouse. Case 7–CB–10683

June 10, 1998

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN AND HURTGEN

The issue presented for Board review is whether the judge properly dismissed the allegation that the Respondent violated Section 8(b)(1)(A) of the Act by its unequal distributions to individual members of a lump sum amount settling multiple grievances with General Motors Corporation.[1] The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions as modified, and to adopt the recommended Order.

AMENDED CONCLUSION OF LAW

Substitute the following for Conclusion of Law 3.

''3. Respondent has violated Section 8(b)(1)(A) of the Act by refusing to provide bargaining unit employee-grievants with their requested accounting of why some grievants received no grievance settlement payments and why there was a disparity in other grievance settlement payments made on March 24, 1995, pursuant to the January 10, 1995 multigrievance settlement negotiated with the Employer.''

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 909, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Warren, Michigan, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] On December 17, 1997, Administrative Law Judge Thomas R. Wilks issued the attached decision. The General Counsel filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Dwight Kirksey, Esq., for the General Counsel.
Alan Benchick, Esq., for the Respondent.

DECISION

STATEMENT OF THE CASE

THOMAS R. WILKS, Administrative Law Judge. The original unfair labor practice charge was filed against Local 909, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Respondent), on September 22, 1995, by Edward F. Billotti, Robert C. Chojnack, Annie P. Smith, and Robert E. Strouse, individuals, and was amended on September 29, 1995. The original complaint was issued by the Regional Director on January 12, 1996, against the Respondent which alleged that the Respondent violated Section 8(b)(1)(A) of the Act by failing to provide its members with a March 30, 1996, requested accounting of why certain of its members did not share in the March 24, 1995, distribution of a lump sum multiple grievance settlement negotiated by it with their Employer, General Motors Corporation, at its Warren, Michigan Powertrain facility (GMC). The Respondent filed its answer on February 15, 1996, which denied the foregoing complaint allegations.

On February 26, 1996, the Regional Director issued an amended consolidated complaint against the Respondent and GMC which consolidated this case with Case 7–CA–37719, originally filed by individual employee Joseph Cox against GMC. The new complaint additionally alleged that the lump sum settlement of $500,000 for all outstanding grievances as of January 10, 1995, was distributed in the individual paychecks of the Respondent's members by GMC in disparate amounts or no payment at all according to the determination made by Respondent's agent, shop committeeman Robert Trice, and/or the Respondent's shop committee ''for reasons and by criteria that are arbitrary, capricious and motivated by bad faith.'' Thus, it alleged the Respondent additionally violated Section 8(b)(1)(A) of the Act and GMC violated Section 8(a)(1) and (3) of the Act by its complicity.

The complaint prayed for, inter alia, that the Respondent disclose the requested distribution information and that the Respondent and GMC ''determine the payment and distribution of the lump sum grievance settlement moneys . . . to bargaining unit employees based on criteria that is not arbitrary, capricious or motivated by bad faith.'' It further prayed that both the Respondent and GMC make whole the Charging Parties and other bargaining unit grievants for any monetary loss caused by their unlawful conduct.

Timely answers were thereafter filed by the Respondent and GMC.

The trial of the consolidated complaint opened before me in Detroit, Michigan, on March 20, 1997. At the opening of the trial, GMC agreed to a Board settlement, which I approved over the objections of Charging Party Cox after consideration of his objections, on the grounds that GMC fully remedied the allegation against it by agreeing that it and the Respondent were jointly and severally liable for the agreed-on total monetary loss claimed by the General Counsel, i.e., $15,306 owed to 47 identified employees, and that GMC would pay 50 percent of this amount to those employees and pay the Respondent's share in the event that it defaults on payment of a remedial Order that may issue against it as a result of this litigation. There is no provision for reimbursement to GMC if the General Counsel does not prevail against the Respondent. The Charging Party insisted that GMC was solely liable and should pay the entire amount. His position was thus contrary to the General Counsel's position as well as legal precedent.

On approval of the settlement agreement, on the record, I approved of the General Counsel's motion to sever this case from Case 7–CA–37719.[1]

During the trial, the parties were provided with reasonable opportunity to adduce testimonial and documentary evidence on behalf of their positions. The parties requested and I provided them with an opportunity to file written briefs which, pursuant to extensions of time granted, were not filed and received in Washington, D.C. until May 27, 1997. The extensions of time caused no delay in this decision because of my involvement with other higher priority litigation and a case backlog caused by that litigation.

Based on the entire record, the briefs, and consideration of the uncontroverted testimony of the General Counsel's witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

At all material times, the Employer, General Motors Corporation-Powertrain Division, a corporation with offices and places of business in Detroit and Warren, Michigan, has been engaged in the manufacturing and nonretail sale of motor vehicles. During calendar year 1994, the Employer, in the course and conduct of its business operations, sold and shipped from its Warren, Michigan Powertrain facilities goods and materials valued in excess of $50,000 directly to points outside the State of Michigan.

It is admitted, and I find, that the Employer is now, and has been at all times material, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION

It is admitted, and I find, that the Respondent Union is now, and has been at all times material, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *Facts*

The Respondent is and, for some time, has been the designated exclusive bargaining agent for an appropriate unit of full- and regular part-time production and maintenance employees employed by GMC at its Warren, Michigan Powertrain facility whom it has represented under successive collective-bargaining agreements.

Commencing on October 10, 1994, the Respondent and the GMC plant management engaged in negotiations to resolve all outstanding individual and group grievances, including, in part, those which alleged violation of the contractual subcontracting, i.e., ''outsourcing,'' clause and loss of unit work.

On January 10 and 11, Robert Trice, the chairman of the Respondent's bargaining committee, and Mark Johnson, the personnel director of GMC in Warren, Michigan, signed an agreement entitled ''POWERTRAIN WARREN PLANT JOINT STATEMENT OF SETTLEMENT AND COMMITMENT.'' Contained in this agreement was a provision that stated in part:

> In full and final settlement of open grievances during these talks without prejudice to either party, back pay will be $500,000.00 within 30 days of this settlement, the Union will notify Management in writing who and in what incremental amounts this money will be distributed.

This agreement served to resolve all outstanding grievances that were outstanding as of January 10, 1995.

On March 24, 1995, this settlement was paid to approximately 1400 of the 2800 Local 909 members. This settlement was reported by the Respondent to its members to be the ''largest single award settlement in the 34 year history of the Warren Plant.'' Among grievances that were settled were so-called skilled trades unit members' ''outsourcing'' grievances alleging a breach of the subcontracting clause of the contract.

On the distribution of the settlement money, i.e., ''payouts,'' by inclusion in the employees' paychecks distributed on March 24, 1995, the employees compared paychecks with one and another, and the record contains unobjected hearsay testimony by the General Counsel's witnesses, including the Charging Parties, as to what other employees told them they had or had not received in payroll money and the consequent outrage expressed by those who received less than others or nothing at all. However, certain paycheck stubs were admitted into evidence without objection which demonstrate some disparity as well as an alleged management generated printed listing of all payout recipients and the amounts received by each which also disclose a disparity of payout amounts from less than $100 to several thousand dollars for all payout recipients. The reputed management generated document does not distinguish outsourcing grievance payouts from other grievance payouts.

Charging Party Edward Billotti is employed in the unit as a skilled trades tool cutter-grinder. He testified that he never campaigned for or against Robert Trice, the bargaining unit shop chairman, but that in some generalized, unspecified, idle shop talk, he expressed a negative opinion of Trice during the election campaign for officers. Billotti testified that at some unspecified date before the 1995 collective-bargaining agreement was settled, he and a group of coworkers asked the Trice shop outsourcing committee appointees, Terry Dodd and Gene Lemieux, to investigate what they considered were improper employer outsourcing and gave them the serial numbers of suspect tools. Billotti testified that he was one of a group of employees who filed a group grievance concerning several issues. He could not recall if he had filed any individual grievances. Billotti conceded that he did not know if the tools he suspected of being outsourced for service had in fact been outsourced. He was uncertain, but he thought, there had been a specific written group grievance on outsourcing covering cutter-grinders. He thinks he may have signed it, ''maybe.'' He identified no specific grievance by grievance number.;

Billotti testified that of 20 coworkers in his area, he received $200 in payout money and from his observation of three pay stubs, and what other employees told him, 17 re-

[1] The Respondent refused to join in the settlement despite the fact that an opposing slate of officers and agents had subsequently ousted those agents alleged to have violated the Act.

ceived $400 and 2 received $500.[2] Billotti then confronted a management representative who told him that Trice was responsible for determining the specific amounts each employee received and that GMC had no input into the calculation.

Billotti next confronted pipefitter Joseph Cox who held the position of the Respondent's day-shift skilled trades committeemen, i.e., the Respondent's line level representative. Billotti complained to Cox of the alleged disparity. Cox promised to investigate. Billotti asked Dodd to explain the disparate payout. He said he would not. Billotti again on the same day, confronted Trice and demanded an explanation as to why Billotti received a $200 payout when others received $400. Trice told him to complain to Cox because Billotti was only due $200, according to a written grievance signed by Cox. Thereupon, Billotti complained to Cox who denied having submitted anything to Trice that limited Billotti's $200 payout. Despite his requests for an explanation of the disparity in payout, he never received one from either Trice or any committee person. Billotti unsuccessfully attempted to get an explanation in a telephone conversation with an International Union representative.

Charging Party Robert C. Chojnack was employed as one of 100 skilled trades machine repairers at the Mound Road plant. He testified that in 1994 he filed some individual safety grievances and signed a ''lot'' of group grievances which were pending as of the January 1995 settlement. He testified that he received no payout money on March 24, 1995. It is his hearsay testimony that 50 other machinists received from $200 to $300 in payout money for unspecified grievances. He assumed it was for an outsourcing grievance, based on hearsay within the unit.

On the payout day, Chojnack asked Cox for an explanation. Cox said he did not have one and later told him that Trice refused to give him an answer. A few weeks later, Chojnack confronted the Respondent's then-president, Leonard Stephens, in the plant and complained to him that he did not share in the outsourcing grievance settlement payout formulation. Stephens told Chojnack that even he, Stephens, could not get an explanation from Trice as to the payout disparity and that Trice refused to give him a list of the payout distributees and amounts they had received.

Charging Party Robert E. Strouse is employed as a day-shift, skilled trades diemaker within the unit. He testified that he had filed grievances in 1993 and 1994 that were pending as of January 10, 1995. In addition to these undescribed grievances, he claimed that he was part of an unidentified group who filed outsourcing grievances in 1994 and an individual grievance over a one-half-day plant shutdown. Strouse received $84 in the March 24 payout distribution. According to his hearsay testimony, the 33 other day-shift diemakers who received a payout averaged about $320 each in payout money received. One of them, Jack Gordon, claimed to Strouse that he received $320 despite having filed no grievances at all. Another, Gene Cancilla, did not receive any payout.

Strouse confronted Dodd the same day and demanded an explanation. Dodd told him that he should be happy with having received anything at all. Strouse testified that he had been a political supporter of Trice during the prior election campaign. On March 24, he confronted Trice and asked for an explanation for the disparity in payout distribution. Trice blamed the disparity on shop committeeman Cox, who he claimed failed to do his homework and ''dropped the ball.''

Strouse then confronted Cox who accused Trice of lying. Strouse was about to confront Trice again when he observed a group of five diemakers approaching the two of them. The diemakers also demanded an explanation for the payout disparity. Trice again blamed Cox for ''not doing his homework.'' Trice explained to them that Cox had not forwarded the names of employees due monetary grievance awards and Cox had not given him anything on which to base the payouts for those who did not receive outsourcing payouts. Cox denied this to Strouse. Trice said that there was no more money and they would get no more money. Strouse testified that he thereafter received no other explanation. Strouse testified that he does not claim to have been subjected to any kind of political retaliation, and that one of his coworker diemakers who received $300 in payout money was a political opponent of Trice.

Strouse assumed that the $84 he received was for the shutdown grievances, but no one ever explained that to him. The pay stubs did not specify the grievance number for the payout money received.

Charging Party David Brophy was employed in the unit during the 1993–1995 period as 1 of 80 millwrights. He testified that he had filed a ''lot'' of outsourcing grievances individually and some as part of a group for certain rack destruction work 2 years earlier that were outstanding as of January 10, 1995. He did not specify the grievance number. Brophy was issued a $249 payout on March 24. It is his hearsay testimony that ''quite a few'' millwrights received $400 payouts, two or three received $249, and one received $69, pursuant to some kind of list shown to him by Cox. When he and another employee asked Cox to explain and Cox could not, they confronted Trice and asked why they were not paid $400 for the group grievance payout as identified by Cox. Trice said he did not know the answer but that Brophy should be happy with what he received. Brophy retorted that he should receive payout money for his individual grievances and also payout money for group grievances which are unrelated to the individual grievance, and the latter of which should be divided equally. Trice told him that he did the best he could and that if Brophy did not like it, he should appeal to the International Union. Brophy never received any other explanation. Brophy was not certain for what grievance he received $249.

Charging Party Annie P. Smith is employed in the unit as a production relief worker. She had filed grievances in 1994 through her committee person, Frank Warren. She testified that at least 10 of these grievances were for over a variety of issues, including seniority violation, misuse of relief workers, reduction of relief employees on the line, and improper transferring of relief workers. All these were pending as of January 1995. None were identified by grievance number. She received no grievance payout money on March 24, 1995. It is her testimony that she observed the paychecks of other relief workers, of whom one received $500, three received nothing, and one received $300. She received nothing. Smith immediately confronted Warren and asked him to explain the

[2] Pay stubs in evidence show that at least two of Billotti's coworkers received $400 each in payout money. No pay stub identified the grievance.

disparity in payout distribution. He told her that he did ''not want to get into it.'' She insisted. He responded that none of her or her group's grievances resulted in any monetary payout. She accused Warren of being politically motivated because he had vocally opposed Trice and Warren and supported the opposition candidate during the internal union election campaign. She gave no specifics as to her activities, i.e., when, where, who was present, the extent of her conduct, and whether it was known to the Respondent.

Subsequently, at a group meeting of unit members conducted by the Respondent, she asked Trice to explain the discrepancy and why she received no monetary payout, and why the payout distribution had not been posted as it had in the past, i.e., by computer printout sheet public posting. Trice asked her if she had talked to her committee person. She said she had, but that now she was asking Trice. Trice responded that it was his prerogative and his business and none of hers. She testified that she then created a ''big stink'' at the meeting and was again recognized by Trice. She asked if his ''favorites'' received payouts. He replied that it was not necessarily ''that way.''

Subsequently, in May 1995, at another meeting, Smith again confronted Trice and asked him for a list of grievance payment distribution which disclosed who was paid which money, and what criteria Trice used for the distribution. Trice told her that it was none of her business. On the next day in the plant, she repeated her questions to Trice. He responded with a question: ''How are you and your committeeman getting along?'' She answered ''not too well.'' He then said, ''then that's your problem.'' Trice answered that he had distributed the payout money pursuant to a list submitted by the committeeman and walked away laughing. She received no other explanation.

In cross-examination, Smith could not identify any of her grievances by number. She did not know what particular grievance resulted in the $500 payout. She conceded that other relief persons had written grievances to which she was not a party and that the $500 payout may have been for such grievance. She admitted that she was not sure which grievance filed by her warranted any monetary relief, but that both monetary and nonmonetary grievances (i.e., policy grievances) were involved and her committeeman told her that she was not involved in a monetary relief grievance. She admitted that many of the alleged improper assignments may not have resulted in any loss of pay. She could not specify any specific grievance she filed which involved a monetary upgrade payout.

Joseph Cox is employed in the unit as a day-shift, skilled trades pipefitter. At the times material, he held the position of skilled trades committeeman, i.e., the line level union representative. The next level of representation is the shop committee for which, at the time of trial, Cox had succeeded Robert Trice. The shop committee is involved in overall plant problems and grievances through the second-step grievances procedure. The third step involves the shop committee chairman and, with respect to outsourcing grievances as defined by the contract, a union subcommittee.

Cox testified that historically, the monetary outcome of skilled trades outsourcing grievances was divided among the skilled trades employees involved. He testified that 60 such outsourcing grievances filed by him remained pending as of January 10, 1995, but he identified none by identification number. Cox had not been informed by Trice as to who or how the distribution of the March 24, 1995 distribution payout was determined in advance. He had not been informed nor consulted as to how his outsourcing grievances had been resolved. He testified that in the past distributions, the shop committee informed the Employer as to the distribution of grievance payouts and both parties consulted on the payout.

Cox testified that on March 24, he had received complaints from skilled trades employees about the lack of any payout receipt and/or the disparity of the amounts which historically had been equally divided for outsourcing grievances. Cox interrogated GMC plant labor relations agents who told him that there were some problems and he should confront Trice. Cox testified that he was shocked because the shop chairman had no authority to ''cut a check.'' Cox had received reports that unit members who had not filed any grievance received $400 in payout and that a grievance-filer received $45. He did not identify the grievances. There are 310 skilled tradesmen on the first shift, inclusive of diemakers, toolmakers, machinists, millwrights, pipefitters, electricians, tool cutter-grinders, and others. Based on Cox's hearsay testimony, there was a wide disparity of payouts to those skilled trades persons. Cox testified that the ''favorite sons'' of Trice received higher payouts. He concluded that cronyism was the only explanation: e.g., Lemieux, a Trice appointee, received $2400; Terry Dodd, a Trice appointee, received $23,000 in payout although he had filed no grievance through Cox, whereas Cox received only $300; Charles Cook, another Trice appointee, received over $4000. On Friday, March 24, Cox asked for but received no explanation for the disparity from shop committeeman McCoy. Cox spent the entire day ''fielding questions'' from his skilled trades constituency. On Monday, March 27, a group of unit members reported to Cox that Trice had accused Cox of not doing his ''homework'' and thus causing the disparate payout. Cox told them that they all should have received an equal share for an outsourcing grievance payout. Cox and the group of skilled trades employees then proceeded to confront Trice in the plant office. Trice was present with his outsourcing committee members Dodd and Lemieux. The employees asked Trice to explain the disparate payout. Trice answered that those who had received no payout were probably ''not part of the'' grievance. The employees insisted that according to past practice, they felt that they should share equally in the payout. Trice then blamed Cox for not doing his ''paper work.'' Cox said it was not true and that there was no reason why all those employees ought not share equally in the payout for outsourcing grievances. Some employees demanded immediate money. Trice said that the money was gone and that if they did not like it, they should ''appeal it,'' that it was ''too bad.'' Some millwrights present protested that there was no reason for their payout exclusion. Trice offered to step outside and settle the issue in a fist fight.

Also, on that Monday, Cox and Billotti met Trice in the plant labor relations department. Cox accused Trice of being a liar. Trice said that if no grievance had been submitted, then a unit member was not entitled to a payout. Cox repeated his previous argument and demanded to see documentation disclosing the amount of payout received by each recipient. Trice repeated his explanation and said that the payout money was now gone and he refused to disclose the requested information, saying that if they did not like it, they could appeal. Cox asked for information about the diemakers' payout distribution for whom Cox had received reports of disparate payouts.

Cox also represented about 30 pipefitters from whom he testified he had filed some outsourcing grievances, unidentified by number, involving the outsourcing of pipe cleaning of valve connections to ''ABCOR.'' Cox testified that according to hearsay reports to him, none had received any payout. Cox asked Respondent Representative Gary McCoy, district shop committeeman, and Pete Belanski, committeeman at large, to explain the nonpayout to the pipefitters but they gave him no answers. Of the pipefitters, Alan Benchick (now the Respondent's president) and Frank Hammer, the previous chairman, had been characterized by Cox as Trice's internal union political enemies, as were five other pipefitters. Cox described himself as having ''supported'' Trice's opposition ''openly and vocally.'' No details of his and the others' ''opposition'' were given.

Cox helped draft a printed questionnaire form for unit members to sign which contained their responses regarding their payout complaints and what they claimed was due to them and collected ''hundreds'' of completed forms. He and former chairman, now pipefitter, Frank Hammer, analyzed the results and formulated an appeal for about 56 members.

In cross-examination, Cox explained that although he played no role in the grievance settlement negotiations, he had submitted to the shop committee, pursuant to its request, copies of all grievances in his possession with his own recommendations as to individual grievances and what he thought would be fair payouts for each grievant. With respect to most political activism, Cox described it as constituting mere sporadic statements in shop talk which did not include voting at meetings or leafletting. He was unable to point to any single act as political activism. He admitted that not all unit members who did not receive a grievance payout were political opponents of Trice. Cox conceded that to this day he has no idea as to the cause of the disparity and whether it was in fact intentional, procedural, managerial, or financial. With respect to the pipefitters, he conceded that Ed Malepa and David McClaren received individual grievance payouts despite their opposition to Trice voiced at union meetings. To the date of trial, Cox never received an explanation from Trice or any other shop committee member for the disparity in grievance payouts except for that proffered by Trice described above.

Frank Hammer testified that he had lost the local union presidency in the 1993 election as an adversary of Trice, and that although he had filed ''a couple'' of unidentified grievances pending on January 10, 1995, he had received no monetary payout. He testified that a ''good number'' of pipefitters had been ''allied'' with him in the 1993 election, but he conceded that, indeed, some had been allied with Trice and some pipefitters who received no outsource grievance payout were Trice's allies.

Hammer helped formulate an appeal based on various hearsay reports, including the questionnaire described by Cox. The results of approximately 45 of these forms were tabulated and put in the form of a letter dated May 10, 1995, and sent to the Local 909 executive board. This letter cited examples of alleged disparity in the settlement awards and requested that the ''Local 909 Executive Board immediately direct Chairman of the Shop Committee, Robert Trice to provide a full and detailed accounting of how the recent lump-sum grievance was disbursed, and who was specifically responsible.'' This letter was signed by Hammer and three of the Charging Parties, Annie Smith, Robert Strouse, Edward Billotti, and three other unit members. It alleged discrimination against Trice's critics, Hammer, Cox, and David McClaren.

The minutes of a special Local Union executive board meeting on May 17, 1995, reveal that, inter alia, it voted to direct the shop committee to submit to the membership ''a detailed report'' as to how the grievance settlement payout was distributed and to make a ''detailed'' response to the May 10 letter.

A general membership meeting was held by the Respondent on May 21, 1995. The May 17 minutes were adopted by vote except for the requested accounting of the shop committee. At the meeting, Trice proclaimed that he did not have to discuss the settlement of individual employee grievances according to some kind of alleged communication by the Regional Director for Region 7 of the Board, apparently involving some other case. The letter was never introduced into evidence. Billotti and other members asked for an explanation for the disparity in grievance settlement payouts, but Trice refused, saying ''it is none of your business.'' Hammer, who was not recognized, shouted from the floor a demand for an accounting but received no answer. Frank Warren, a Trice appointee, announced that he had received a payout through error and he had returned it. According to the purported management-generated document identified by Hammer and introduced into evidence without objection, Warren had received $1184. Trice appointee Dodd received $2383; Lemieux received $2382; and Trice himself received $4296. However, of about 1350 recipients, about 46 unit members each received $1000 or more. Four of those received over $4000. Several varied from $2000 to $3000. One received $35,000. There is insufficient evidence to identify most of those members or any but a few of them as political supporters of Trice or that their monetary payouts were not the result of individual grievances unrelated to the outsourcing grievances, which the Charging Parties claim should have been equally divided.

Subsequently, a written appeal of the membership vote for rejection of the accounting direction was filed by a letter signed by Hammer, three Charging Parties, and others. The appeal was denied by the International Union which found that the payouts were issued for a wide variety of grievances consistent with the work and workers involved. It further found that with respect to outsourcing grievance payouts disparity for skilled tradesmen, there were different amounts of lost work involved. However, the International Union did recommend that the Respondent ''permit individuals to have access to the settlement document affecting their cases.'' There has been no such compliance.

B. *Analysis*

In the Board's decision of *California Saw & Knife Works*, 320 NLRB 224, 228–230 (1995), the Board reviewed the evolution of the concept of a union's duty to employees whom it represents, noting in part as follows:

> The [Supreme] Court explained in *Ford Motor Co. v. Huffman*, 345 U.S. 330 (1953), that a union's duty of

fair representation under the NLRA arises from the grant under Section 9(a) of the Act of the union's exclusive power to represent all employees in a particular bargaining unit. The Court declared

> [t]hat the authority of bargaining representatives . . . is not absolute is recognized in *Steel* [supra], in connection with comparable provisions of the Railway Labor Act. Their statutory obligation to represent all members of an appropriate unit requires them to make an honest effort to serve the interests of all of those members, without hostility to any.

Id. at 337. The Court concluded, however, that the union in *Huffman* had not breached its duty by agreeing to credit new hires for previous military service when determining seniority, recognizing that inevitable differences will arise as to the manner in which the terms of a negotiated agreement will affect individual employees, and acknowledging the public policy favoring seniority preference for military service. The Court explained that ''[a] wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.'' Id. at 338.

Subsequently, the Board embraced the doctrine and held that a breach of a union's duty of fair representation constitutes an unfair labor practice. In *Miranda Fuel Co*., the Board majority held that Section 7 ''gives employees the right to be free from unfair or irrelevant or invidious treatment by their exclusive bargaining agent in matters affecting their employment.'' Id. at 185. The Board majority concluded ''that Section 8(b)(1)(A) of the Act accordingly prohibits labor organizations, when acting in a statutory representative capacity, from taking action against employee upon considerations or classifications which are irrelevant, invidious, or unfair.'' Id. The Board has had occasion to apply the duty of fair representation in a wide variety of contexts. ''A cursory review of Board volumes following *Miranda Fuel* discloses numerous cases in which the Board has found the duty of fair representation breached where the union's conduct was motivated by an employee's lack of union membership, strifes resulting from intraunion politics, and racial or gender considerations.'' *Postal Service*, 272 NLRB 93, 104 (1984).

In *Vaca v. Sipes*, 386 U.S. 171 (1967), the Court reviewed its development of the duty of fair representation and specifically defined the doctrine. ''A breach of the statutory duty of fair representation occurs only when a union's conduct toward a member of the *collective-bargaining* unit is arbitrary, discriminatory, or in bad faith.'' Id. at 190. The Court stressed that the doctrine granting employees redress in the courts against their bargaining agent serves ''as a bulwark to present arbitrary union conduct against individuals stripped of traditional forms of redress by the provisions of federal labor law.'' Id. at 182. The Court nevertheless found in *Vaca* that the union had not breached its duty to a wrongfully discharged employee by failing to take his grievance to arbitration, because the union had vigorously pursued the grievance before ultimately concluding that arbitration would be fruitless.

The Court further made clear in *Vaca*, and has continued to emphasize, that the duty of fair representation extends to a wide variety of circumstances. Id. at 177. Under the doctrine, a union must represent fairly the interests of all bargaining-unit members during the negotiation, administration, and enforcement of collective-bargaining agreements.'' *Electrical Workers v. Foust*, 442 U.S. 42, 47 (1979); *Beck*, 487 U.S. at 743. Given the wide variety of circumstances in which fair representation principles are apposite, the applicable standards often elude consistent articulation. Indeed, the Supreme Court itself has acknowledged that ''there is admittedly some variation in the way in which [its] opinions have described the unions' duty of fair representation[.]'' *Air Line Pilots v. O'Neill*, 499 U.S. 65, 76 (1991). The Court accordingly granted certiorari in *O'Neill* to clarify the standard that governs a claim that a union has breached its duty of fair representation with respect to contract negotiation. The Court announced:

> We hold that the rule announced in *Vaca v. Sipes*, 386 U.S. 171, 190 (1967)—that a union breaches its duty of fair representation if its actions are either ''arbitrary, discriminatory, or in bad faith'' applies to all union activity . . . .

499 U.S. at 67 (emphasis added).

The *O'Neill* Court further stressed that the tripartite *Vaca* standard applies to contract negotiation, administration, an enforcement, as well as to when a union is acting in its representative capacity in operating a hiring hall. Id. at 77.[34]

[34] The Board and the courts have accordingly applied the duty of fair representation as refined in *O'Neill*, supra, to a variety of circumstances. See, e.g., *Teamsters Local 101 (Allied Signal)*, 308 NLRB 140 (1992) (union did not violate duty of fair representation in devising method for distributing proceeds from arbitral award); *Lewis v. Tuscan Dairy Farms*, 25 F.3d 1138 (2d Cir. 1994) (union violated duty of fair representation by negotiating secret agreement with employer, concealing the agreement from unit employees, and failing to follow usual arbitration procedures); *Souter v. International Union (UAWA)*, 993 F.2d 595 (7th Cir. 1993) (duty of fair representation applied in context of grievance processing); and *Electronic Workers v. NLRB*, 41 F.3d 1532, 1537 (D.C. Cir. 1994) (union did not violate duty of fair representation by maintaining a union-security agreement requiring bargaining unit employees to become and remain members of the union in good standing).

With respect to a union's breach of its representational duty involving the distribution of an arbitral award, the General Counsel cites *Teamsters Local 101 (Allied Signal)*, supra, and *Mine Workers Local 1378 (Pennsylvania Mines Corp.)*, 317 NLRB 663 (1995).

In the latter case, the Board found that a union's agent ''acted in derogation of their duty of fair representation by acting arbitrarily and unreasonably'' when they retained the entire arbitral award for the union and made no effort to determine the identify of employees entitled to a distribution. In the former case, the Board adopted the administrative law judge's decision in finding that the General Counsel did not establish ''that the Respondent was motivated by animus when it decided to include [certain employees] in the [grievance] settlement [distribution].'' *Allied Signal*, supra. The judge therein had reviewed the rationale of the *O'Neill* and *Vaca* decisions, supra. He further noted:

> The fact that the negotiating process leads to a decision which does to meet everyone's perception of fairness is not itself offensive to his standard. *Strick Corp.*, 241 NLRB 210 (1979); *Steelworkers Local 2869 (Kaiser Steel Corp.)*, 239 NLRB 982 (1978); *Humphrey v. Moore*, 375 U.S. 335 (1964). ''[M]ere negligence would not state a claim for breach of the duty . . . .'' *Steelworkers v. Rawson*, 495 U.S. 362 (1990).

He proceeded to evaluate whether the union's conduct of including a certain classification group in the arbitral award distribution was proven to be ''unfair, arbitrary, capricious, and invidious.'' He evaluated the facts and found no evidence the grievance/arbitration process or subsequent negotiations made it unreasonable to include all employees in the distribution. He thereupon evaluated the issue of invidious motivation and found that the General Counsel failed to sustain his burden of proof of a ''preponderance of evidence,'' *Allied Signal*, supra at 146–150.

In *Letter Carriers Branch 6070*, 316 NLRB 235, 236 (1995), in a settlement of a grievance, an employer agreed with a union to distribute the award only to 12 most adversely affected employees. It was alleged that the union's conduct was arbitrary. The judge, whose decision was adopted by the Board, noted that ''mere negligence does not constitute a breach of the duty of fair representation,'' and he cited *Rawson*, 495 U.S. at 376, and *Le 'Mon v. NLRB*, 952 F.2d 1203, 1205 (10th Cir. 1991). He found insufficient evidence of unreasonableness and animus, and he concluded that even if the union's selection process resulted in someone else less deserving sharing the award, ''the lack of perfection in the selection process is well within the latitude and margin for honest error the Union has under the law.''

It is the General Counsel's burden ''to establish unlawful conduct by something more than suspicion.'' *Laborers Local 423A*, 313 NLRB 807, 812 (1994). *Operating Engineers Local 137 (Various Employers)*, 317 NLRB 909, 917 (1995). In job referral hiring hall cases, however, a ''high standard of fair dealing is imposed upon a union.'' *California Saw & Knife Workers*, supra at 328–330. In such cases, the Board applies the burden of proof as set forth in *Wright Line*, 251 NLRB 1083 (1980), but the General Counsel even there must show that a union has in fact acted adversely to an alleged discriminatee, beyond a mere showing of suspicion. *Operating Engineers Local 137*, supra at 923.

With respect to nondisclosure of requested information to its constituency, a union may also act in a manner which breaches its representational duties. A refusal to provide job referral information in the operation of an exclusive hiring hall may be unlawful. *Teamsters Local 282*, 280 NLRB 733 (1986). Similarly, a union may breach its representational duties by failing to disclose requested information regarding the status of an employee grievance. *Union of Security Personnel of Hospitals*, 267 NLRB 974, 980 (1983), and by also refusing to supply copies of the grievance to the employee. *Letter Carriers Branch 529*, 319 NLRB 879, 880 (1995).

Conclusions

The evidence adduced by the General Counsel consists largely of an anecdotal, conclusionary, and hearsay nature. The chief question as to the disparity of distribution issues is whether the General Counsel has established sufficient probative evidence to constitute a prima facie case or whether he has merely demonstrated grounds for suspicion of misconduct beyond mere negligence. With respect to the invidious motivation issue, i.e., intraunion political favoritism, the evidence fails to demonstrate a consistent pattern of discrimination. With respect to the nonconformance with alleged past practice and arbitrary or unreasonable disparity allegation, the evidence reveals grounds for suspicion. However, I cannot determine from the state of the record evidence whether in fact there had been such general divergence regarding outsourcing grievances and, if there was, whether it was due to arbitrary or unreasonable criteria, rather than mere negligence. The lack of specific grievance identification description, whom it covered, and how it was resolved impedes a meaningful evaluation of just what occurred. I conclude that it was incumbent on the General Counsel to demonstrate more than the mere existence of a disparate distribution of a small faction of a huge grievance settlement covering group and individual grievances, and the Respondent's agent's refusal to give individual members a specific accounting.

With respect to the allegation concerning the Respondent's refusal to account to its members for the disparity in grievance settlement money distribution, I conclude that it is meritorious. I find that the Respondent has a duty and an obligation to inform its members of the status of their grievances inclusive of an accounting of the distribution of grievance settlement moneys, particularly in the context of such a massive group and individual grievances settlement. By failing to give such accounting, the Respondent violated Section 8(b)(1)(A) of the Act.

Conclusions of Law

1. As found above, General Motors Corporation-Powertrain Division is an employer engaged in commerce within the meaning of the Act.

2. The Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent has violated Section 8(b)(3)(A) of the Act by refusing to provide bargaining unit employee grievances with their requested accounting of why some grievants received no grievance settlement payments and why there was a disparity in other grievance settlement payments made on March 24, 1995, pursuant to the January 10, 1995 multi-grievance settlement negotiated with the Employer.

4. The unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that the Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action necessary to effectuate the policies of the Act. I recommend that the Respondent provide to its bargaining unit employee grievants their requested accounting of grievance settlement payments made on March 24, 1995, pursuant to the January 10, 1995 multigrievance settlement.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

The Respondent, Local 909, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO, Warren Michigan, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Refusing to provide bargaining unit grievants with their requested accounting of why some grievants received no grievance settlement payments and why there was a disparity in other grievance settlement payments made on March 24, 1995, pursuant to the January 10, 1995 multigrievance settlement negotiated with General Motors Corporation-Powertrain Division.

(b) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Immediately provide to all individual bargaining unit grievants who had requested, an accounting of why some grievances received no settlement payments and why there was a disparity of other grievance settlement payments made on March 24, 1995, pursuant to the multigrievance settlement with General Motors Corporation-Powertrain Division.

(b) Within 14 days after service by the Region, post at its union office in Warren, Michigan, copies of the attached notice marked ‘‘Appendix.’’[4] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Sign and return to the Regional Director sufficient copies of the notice for posting by General Motors Corporation-Powertrain Division, if willing, at all places where notices to employees are customarily posted.

(d) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ‘‘Posted by Order of the National Labor Relations Board’’ shall read ‘‘Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.’’

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to provide bargaining unit grievants with their requested accounting of why some grievants received no grievance settlement payments and why there was a disparity in other grievance settlement payments made on March 24, 1995, pursuant to the January 10, 1995 multigrievance settlement negotiated with General Motors Corporation-Powertrain Division.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of the rights guaranteed them in Section 7 of the Act.

WE WILL immediately provide to all individual bargaining unit grievants who had requested an accounting of why some grievances received no settlement payments and why there was a disparity of other grievance settlement payments made on March 24, 1995, pursuant to the multigrievance settlement with General Motors Corporation-Powertrain Division.

LOCAL 909, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW), AFL–CIO